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who is a member in good standing of the bar of any State, to include in any report required to be filed pursuant to the provisions of section 201(a) of the Act, and of this part, any information which was lawfully communicated to such attorney by any of his clients in the course of a legitimate attorney-client relationship.

§ 402.12 Publication of reports required by this part.

Inspection and examination of any report or other document filed as required by this part, and the furnishing by the Office of Labor-Management Standards of copies thereof to any person requesting them, shall be governed by part 70 of this title.

[35 FR 2990, Feb. 13, 1970]

§ 402.13 OMB control number.

The collecting of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 1215-0188.

[59 FR 15115, Mar. 31, 1994, as amended at 63 FR 33779, June 19, 1998]

PART 403—LABOR ORGANIZATION ANNUAL FINANCIAL REPORTS

Sec.

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403.10 Publication of reports required by this part.

403.11 OMB control number.

AUTHORITY: Labor-Management Reporting and Disclosure Act Secs. 202, 207, 208, 73 Stat. 525, 529 (29 U.S.C. 432, 437, 438); Secretary's Order No. 4-2007, May 2, 2007, 72 FR 26159.

EFFECTIVE DATE NOTE: At 74 FR 3725, Jan. 21, 2009, the authority citation to part 403 was revised, effective February 20, 2009. At 74 FR 7814, Feb. 20, 2009, this revision was de-

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layed until April 21, 2009. At 74 FR 18132, Apr. 21, 2009, this revision was further delayed until October 19, 2009. For the convenience of the user, the added and revised text is set forth as follows:

AUTHORITY: Secs. 202, 207, 208, 73 Stat. 525, 529 (29 U.S.C. 432, 437, 438); Secretary's Order No. 4-2007, May 2, 2007, 72 FR 26159.

SOURCE: 28 FR 14383, Dec. 27, 1963, unless otherwise noted.

§ 403.1 Fiscal year for reports required by this part.

(a) As used in this part, unless otherwise defined, the term *fiscal year* means the calendar year or other period of 12 consecutive calendar months, on the basis of which financial accounts are kept by a labor organization reporting under this part. Where a labor organization designates a new fiscal year period prior to the expiration of a previously established fiscal year period, the resultant period of less than 12 consecutive calendar months, and thereafter the newly established fiscal year, shall in that order each constitute a fiscal year for purposes of the report required to be filed by section 201(b) of the Act, and of the regulations in this part.

(b) A labor organization which is subject to section 201(b) of the Act for only a portion of its fiscal year because the labor organization first becomes subject to the Act during such fiscal year, may consider such portion as the entire fiscal year in making its report under this part.

[28 FR 14383, Dec. 27, 1963, as amended at 42 FR 59070, Nov. 15, 1977]

§ 403.2 Annual financial report.

(a) Every labor organization shall, as prescribed by the regulations in this part, file with the Office of Labor-Management Standards within 90 days after the end of each of its fiscal years, a financial report signed by its president and treasurer, or corresponding principal officers.

(b) Every labor organization shall include in its annual financial report filed as provided in paragraph (a) of this section, in such detail as may be necessary accurately to disclose its financial condition and operations for its preceding fiscal year and in such categories as prescribed by the Assistant

Secretary under the provisions of this part, the information required by section 201(b) of the Act and found by the Assistant Secretary under section 208 thereof to be necessary in such report.

(c) If, on the date for filing the annual financial report of a labor organization required under section 201(b) of the Act and this section, such labor organization is in trusteeship, the labor organization which has assumed trusteeship over such labor organization shall file such report as provided in § 408.5 of this chapter.

(d)(1) Every labor organization with annual receipts of \$250,000 or more shall file a report on Form T-1 for each trust that meets the following conditions:

(i) The trust is of the type defined by section 3(l) of the LMRDA, i.e., the trust was created or established by the labor organization or the labor organization appoints or selects a member of the trust's governing board; and the trust has as a primary purpose to provide benefits to the members of the labor organization or their beneficiaries (29 U.S.C. 402(1)); and the labor organization, alone or with other labor organizations, either:

(A) Appoints or selects a majority of the members of the trust's governing board; or

(B) Makes contributions to the trust that exceed 50 percent of the trust's receipts during the trust's fiscal year; and

(ii) None of the exemptions discussed in paragraph (d)(3) of this section apply.

(iii) For purposes of paragraph (d)(1)(i)(B), contributions by an employer pursuant to a collective bargaining agreement with a labor organization shall be considered contributions by the labor organization.

(2) A separate report shall be filed on Form T-1 for each such trust within 90 days after the end of the labor organization's fiscal year in the detail required by the instructions accompanying the form and constituting a part thereof, and shall be signed by the president and treasurer, or corresponding principal officers, of the labor organization.

(3) No Form T-1 should be filed for any trust

(i) That meets the statutory definition of a labor organization and already files a Form LM-2, Form LM-3, or Form LM-4,

(ii) That the LMRDA exempts from reporting, such as an organization composed entirely of state or local government employees or a state or local central body,

(iii) Established as a Political Action Committee (PAC) if timely, complete and publicly available reports on the PAC are filed with a Federal or state agency,

(iv) Established as a political organization under 26 U.S.C. 527 if timely, complete, and publicly available reports are filed with the Internal Revenue Service,

(v) Constituting a federal employee health benefit plan subject to the provisions of the Federal Employees Health Benefits Act (FEHBA)

(vi) Required to file a Form 5500. For purposes of this section only, a trust is "required to file a Form 5500" if a plan administrator is required to file an annual report on behalf of the trust under 29 U.S.C. section 1021 and/or 1024. A trust on whose behalf such annual report is required to be filed that is eligible for an exemption from filing the annual report, the Form 5500, or the Form 5500-SF is not included within this exemption and is deemed for purposes of this section only not to be a trust "required to file a Form 5500," even if a Form 5500 is filed on behalf of that trust. A trust eligible to file a notice or statement with the Secretary of Labor in lieu of an annual report pursuant to an exemption from, or as an alternative method of complying with, the annual reporting obligation is not included within this exemption, even if it does file a Form 5500 or Form 5500-SF.

(4) A labor organization may complete only Items 1 through 15 and Items 26 through 27 (Signatures) of Form T-1 if annual audits prepared according to standards set forth in the Form T-1 instructions and a copy of the audit is filed with the Form T-1.

(5) If such labor organization is in trusteeship on the date for filing the annual financial report, the labor organization that has assumed trusteeship

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over such subordinate labor organization shall file such report as provided in § 408.5 of this chapter.

[28 FR 14383, Dec. 27, 1963, as amended at 50 FR 31309, Aug. 1, 1985; 68 FR 58447, Oct. 9, 2003; 71 FR 57737, Sept. 29, 2006; 73 FR 57449, Oct. 2, 2008]

§ 403.3 Form of annual financial report—detailed report.

Every labor organization shall, except as expressly provided otherwise in this part, file an annual financial report as required by § 403.2, prepared on United States Department of Labor Form LM-2, “Labor Organization Annual Report,” in the detail required by the instructions accompanying the form and constituting a part thereof.

NOTE: Form LM-2 was revised at 58 FR 67594, December 21, 1993.

[28 FR 14383, Dec. 27, 1963, as amended at 62 FR 6092, Feb. 10, 1997]

§ 403.4 Simplified annual reports for smaller labor organizations.

(a)(1) If a labor organization, not in trusteeship, has gross annual receipts totaling less than \$200,000 for its fiscal year, it may elect, subject to revocation of the privileges as provided in section 208 of the Act, to file the annual financial report called for in section 201(b) of the Act and § 403.3 of this part on United States Department of Labor Form LM-3 entitled “Labor Organization Annual Report,” in accordance with the instructions accompanying such form and constituting a part thereof.

(2) If a labor organization, not in trusteeship, has gross annual receipts totaling less than \$10,000 for its fiscal year, it may elect, subject to revocation of the privileges as provided in section 208 of the Act, to file the annual financial report called for in section 201(b) of the Act and § 403.3 on United States Department of Labor Form LM-4 entitled “Labor Organization Annual Report” in accordance with the instructions accompanying such form and constituting a part thereof.

(b) A local labor organization not in trusteeship, which has no assets, no liabilities, no receipts and no disbursements during the period covered by the annual report of the national organiza-

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tion with which it is affiliated need not file the annual report required by § 403.2 if the following conditions are met:

(1) It is governed by a uniform constitution and bylaws filed on its behalf pursuant to § 402.3(b) of this chapter, and does not have governing rules of its own;

(2) Its members are subject to uniform fees and dues applicable to all members of the local labor organizations for which such simplified reports are submitted;

(3) The national organization with which it is affiliated assumes responsibility for the accuracy of, and submits with its annual report, a separate letter-size sheet for each local labor organization containing the following information with respect to each local organization in the format illustrated below as part of this regulation:

(i) The name and designation number or other identifying information;

(ii) The file number which the Office of Labor-Management Standards has assigned to it;

(iii) The mailing address;

(iv) The beginning and ending date of the reporting period which must be the same as that of the report for the national organization;

(v) The names and titles of the president and treasurer or corresponding principal officers as of the end of the reporting period;

(4) At least thirty days prior to first submitting simplified annual reports in accordance with this section, the national organization notifies the Office of Labor-Management Standards in writing of its intent to begin submitting simplified annual reports for affiliated local labor organizations;

(5) The national organization files the terminal report required by 29 CFR 403.5(a) on Form LM-3 or LM-4, as may be appropriate, clearly labeled on the form as a terminal report, for any local labor organization which has lost its identity through merger, consolidation, or otherwise if the national organization filed a simplified annual report on behalf of the local labor organization for its last reporting period; and

(6) The national organization with which it is affiliated assumes responsibility for the accuracy of, and submits

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with its annual report and the simplified annual reports for the affiliated local labor organizations, the following certification properly completed and signed by the president and treasurer of the national organization:

CERTIFICATION

We, the undersigned, duly authorized officers of [name of national organization], hereby certify that the local labor organizations individually listed on the attached documents come within the purview of 29 CFR 403.4(b) for the reporting period from [beginning date of national organization's fiscal year] through [ending date of national organization's fiscal year], namely:

(1) they are local labor organizations; (2) they are not in trusteeship; (3) they have no assets, liabilities, receipts, or disbursements; (4) they are governed by a uniform constitution and bylaws, and fifty copies of the most recent uniform constitution and bylaws have been filed with the Office of Labor-Management Standards; (5) they have no governing rules of their own; and (6) they are subject to the following uniform schedule of fees and dues: [specify schedule for dues, initiation fees, fees required from transfer members, and work permit fees, as applicable].

Each document attached contains the specific information called for in 29 CFR 403.4(b)(3)(i)-(v), namely: (i) the local labor organization's name and designation number; (ii) the file number assigned the organization by the Office of Labor-Management Standards; (iii) the local labor organization's mailing address; (iv) the beginning and ending date of the reporting period; and (v) the names and titles of the president and treasurer or corresponding principal officers of the local labor organization as of [the ending date of the national organization's fiscal year].

Furthermore, we certify that the terminal reports required by 29 CFR 403.4(b)(5) and 29 CFR 403.5(a) have been filed for any local labor organizations which have lost their identity through merger, consolidation, or otherwise on whose behalf a simplified annual report was filed for the last reporting period.

(FORMAT FOR SIMPLIFIED ANNUAL REPORTING)

SIMPLIFIED ANNUAL REPORT

Affiliation name:

Designation name and number:

Unit name:

Mailing address:

Name of person:

Number and street:

City, State and zip:

File number:

Period covered:

From Through

Names and Titles of president and treasurer or corresponding principal officers

For certification see NHQ file folder file number:

President

Where signed

Date

Treasurer

Where signed

Date

[28 FR 14383, Dec. 27, 1963, as amended at 37 FR 10669, May 26, 1972; 41 FR 27318, July 2, 1976; 45 FR 7525, Feb. 1, 1980; 50 FR 31309, Aug. 1, 1985; 50 FR 31310, Aug. 1, 1985; 57 FR 49290, 49357, Oct. 30, 1992; 62 FR 6092, Feb. 10, 1997; 64 FR 71623, Dec. 21, 1999; 65 FR 21141, Apr. 20, 2000]

EFFECTIVE DATE NOTE: At 74 FR 3725, Jan. 21, 2009, § 403.4 was amended by revising paragraph (a)(1), redesignating paragraph (b) as paragraph (f) and by adding a new paragraph (b), and paragraphs (b), (c), and (d), effective February 20, 2009. At 74 FR 7814, Feb. 20, 2009, this amendment was delayed until April 21, 2009. At 74 FR 18132, Apr. 21, 2009, this amendment was further delayed until October 19, 2009. For the convenience of the user, the revised and added text is set forth as follows:

§ 403.4 Simplified annual reports for smaller labor organizations.

(a)(1) If a labor organization, not in trusteeship, has gross annual receipts totaling less than \$250,000 for its fiscal year, it may elect, subject to revocation of the privilege as provided in section 208 of the LMRDA, to file the annual financial report called for in section 201(b) of the LMRDA and § 403.3 of this part on United States Department of Labor Form LM-3 entitled "Labor Organization Annual Report," in accordance with the instructions accompanying such form and constituting a part thereof.

(b) The Secretary may revoke a labor organization's privilege to file the Form LM-3 simplified annual report described in § 403.4(a)(1) and require the labor organization to file the Form LM-2 as provided in § 403.3, if the following conditions are met:

(1) The Secretary has provided notice to the labor organization that revocation is

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possible if conditions warranting revocation are not remedied;

(2) The Secretary has undertaken such investigation as the Secretary deems proper revealing:

(i) The date the labor organization's Form LM-3 was due has passed and no Form LM-3 has been received; or

(ii) The labor organization filed the Form LM-3 with a material deficiency and failed to remedy this deficiency after notification by the Secretary that the report was deficient; or

(iii) Other circumstances exist that warrant revocation of the labor organization's privilege to file the Form LM-3.

(3) The Secretary has provided notice to the labor organization of a proposed decision to revoke the filing privilege, the reason for such revocation, and an opportunity for the labor organization to submit in writing a position statement with relevant factual information and argument regarding:

(i) The existence of the delinquency or the deficiency (including whether a deficiency is material) or other circumstances alleged in the notice;

(ii) The reason for the delinquency, deficiency or other cited circumstance and whether it was caused by factors reasonably outside the control of the labor organization; and

(iii) Any other factors, including those in mitigation, the Secretary should consider in making a determination regarding whether the labor organization's privilege to file the Form LM-3 should be revoked.

(4) The Secretary (or a designee who has not participated in the investigation), after review of all the information collected and provided, shall issue a determination in writing to the labor organization. If the Secretary determines that the privilege shall be revoked, the Secretary will inform the labor organization of the reasons for the determination and order it to file the Form LM-2 for such reporting periods as the Secretary finds appropriate.

(c) A labor organization that receives a notice as set forth in § 403.4(b)(3) must submit its written statement of position and any supporting facts, evidence, and argument by mail, hand delivery, or by alternative means specified in the notice to the Office of Labor-Management Standards (OLMS) at the address provided in the notice within 30 days after the date of the letter proposing revocation. If the 30th day falls on a Saturday, Sunday, or Federal holiday, the submission will be timely if received by OLMS on the first business day after the 30th day. Absent a timely submission to OLMS, the proposed revocation shall take effect automatically unless the Secretary in his or her discretion determines otherwise.

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(d) The Secretary's determination shall be the Department's final agency action on the revocation.

(e) For purposes of this section, a deficiency is "material" if in the light of surrounding circumstances the inclusion or correction of the item in the report is such that it is probable that the judgment of a reasonable person relying upon the report would have been changed or influenced.

§ 403.5 Terminal financial report.

(a) Any labor organization required to file a report under the provisions of this part, which during its fiscal year loses its identity as a reporting labor organization through merger, consolidation, or otherwise, shall, within 30 days after such loss, file a terminal financial report with the Office of Labor-Management Standards, on Form LM-2, LM-3, or LM-4, as may be appropriate, signed by the president and treasurer or corresponding principal officers of the labor organization immediately prior to the time of its loss of reporting identity.

(b) Every labor organization which has assumed trusteeship over a subordinate labor organization shall file within 90 days after the termination of such trusteeship on behalf of the subordinate labor organization a terminal financial report with the Office of Labor-Management Standards, on Form LM-2 and in conformance with the requirements of this part.

(c) For purposes of the reports required by paragraphs (a) and (b) of this section, the period covered thereby shall be the portion of the labor organization's fiscal year ending on the effective date of its loss of reporting identity, or the portion of the subordinate labor organization's fiscal year ending on the effective date of the termination of trusteeship over such subordinate labor organization, as the case may be.

(d) If a labor organization filed or was required to file a report on a trust pursuant to § 403.2(d) and that trust loses its identity during its subsequent fiscal year through merger, consolidation, or otherwise, the labor organization shall, within 30 days after such loss, file a terminal report on Form T-1, with the Office of Labor-Management Standards, signed by the president and treasurer or corresponding

principal officers of the labor organization. For purposes of the report required by this paragraph, the period covered thereby shall be the portion of the trust's fiscal year ending on the effective date of the loss of its reporting identity.

[28 FR 14383, Dec. 27, 1963, as amended at 50 FR 31309, 31310, Aug. 1, 1985; 62 FR 6092, Feb. 10, 1997; 68 FR 58447, Oct. 9, 2003; 71 FR 57737, Sept. 29, 2006; 73 FR 57449, Oct. 2, 2008]

§ 403.6 Personal responsibility of signatories of reports.

Each individual required to sign a report under section 201(b) of the Act and under this part shall be personally responsible for the filing of such report and for any statement contained therein which he knows to be false.

§ 403.7 Maintenance and retention of records.

Every person required to file any report under this part shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Office of Labor-Management Standards may be verified, explained or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain.

§ 403.8 Dissemination and verification of reports.

(a) Every labor organization required to submit a report under section 201(b) of the Act and under this part shall make available to all its members the information required to be contained in such reports, and every such labor organization and its officers shall be under a duty to permit such member for just cause to examine any books, records, and accounts necessary to verify such report.

(b)(1) If a labor organization is required to file a report under this part using the Form LM-2 and indicates that it has failed or refused to disclose information required by the Form con-

cerning any disbursement, or receipt not otherwise reported on Statement B, to an individual or entity in the amount of \$5,000 or more, or any two or more disbursements, or receipts not otherwise reported on Statement B, to an individual or entity that, in the aggregate, amount to \$5,000 or more, because disclosure of such information may be adverse to the organization's legitimate interests, then the failure or refusal to disclose the information shall be deemed "just cause" for purposes of paragraph (a) of this section.

(2) Disclosure may be adverse to a labor organization's legitimate interests under this paragraph if disclosure would reveal confidential information concerning the organization's organizing or negotiating strategy or individuals paid by the labor organization to work in a non-union facility in order to assist the labor organization in organizing employees, provided that such individuals are not employees of the labor organization who receive more than \$10,000 in the aggregate in the reporting year from the union.

(3) This provision does not apply to disclosure that is otherwise prohibited by law or that would endanger the health or safety of an individual.

(c)(1) If a labor organization is required to file a report under this part using the Form T-1 and indicates that it has failed or refused to disclose information required by the Form concerning any disbursement or receipt to an individual or entity in the amount of \$10,000 or more, or any two or more disbursements or receipts that, in the aggregate, amount to \$10,000 or more, because disclosure of such information may be adverse to the organization's legitimate interests, then the failure or refusal to disclose the information shall be deemed "just cause" for purposes of paragraph (a) of this section.

(2) Disclosure may be adverse to a labor organization's legitimate interests under this paragraph if disclosure would reveal confidential information concerning the organization's organizing or negotiating strategy or individuals paid by the trust to work in a non-union facility in order to assist the labor organization in organizing employees, provided that such individuals

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are not employees of the trust who receive more than \$10,000 in the aggregate in the reporting year from the trust.

(3) This provision does not apply to disclosure that is otherwise prohibited by law or that would endanger the health or safety of an individual, or that would consist of individually identifiable health information the trust is required to protect under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Regulation.

(d) In all other cases, a union member has the burden of establishing “just cause” for purposes of paragraph (a) of this section.

[28 FR 14383, Dec. 27, 1963, as amended at 68 FR 58447, Oct. 9, 2003; 71 FR 57737, Sept. 29, 2006; 73 FR 57449, Oct. 2, 2008]

§ 403.9 Attorney-client communications exempted.

Nothing contained in this part shall be construed to require an attorney who is a member in good standing of the bar of any State, to include in any report required to be filed pursuant to the provisions of section 201(b) of the Act, and of this part, any information which was lawfully communicated to such attorney by any of his clients in the course of a legitimate attorney-client relationship.

§ 403.10 Publication of reports required by this part.

Inspection and examination of any report or other document filed as required by this part, and the furnishing by the Office of Labor-Management Standards of copies thereof to any person requesting them, shall be governed by part 70 of this title.

[35 FR 2990, Feb. 13, 1970]

§ 403.11 OMB control number.

The collecting of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 1215-0188.

[59 FR 15115, Mar. 31, 1994, as amended at 63 FR 33779, June 19, 1998]

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PART 404—LABOR ORGANIZATION OFFICER AND EMPLOYEE REPORTS

Sec.

404.1 Definitions.

404.2 Annual report.

404.3 Form of annual report.

404.4 [Reserved].

404.5 Attorney-client communications exempted.

404.6 Personal responsibility of signatories of reports.

404.7 Maintenance and retention of records.

404.8 Publication of reports required by this part.

404.9 OMB control number.

AUTHORITY: Secs. 202, 207, 208, 73 Stat. 525, 529 (29 U.S.C. 432, 437, 438); Secretary's Order No. 4-2001, 66 FR 29656 (May 31, 2001).

SOURCE: 28 FR 14384, Dec. 27, 1963, unless otherwise noted.

§ 404.1 Definitions.

As used in this part the term:

(a) Benefit with monetary value means anything of value, tangible or intangible, including any interest in personal or real property, gift, insurance, retirement, pension, license, copyright, forbearance, bequest or other form of inheritance, office, options, agreement for employment or property, or property of any kind. For reporting purposes, the following are excepted: pension, health, or other benefit payments from a trust that are provided pursuant to a written specific agreement covering such payments.

(b) Dealing means to engage in a transaction (bargain, sell, purchase, agree, contract) or to in any way traffic or trade, including solicitation of business.

(c) *Employer* means any employer or any group or association of employers engaged in an industry affecting commerce (1) which is, with respect to employees engaged in an industry affecting commerce, an employer within the meaning of any law of the United States relating to the employment of any employees or (2) which may deal with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and includes any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee but does not